

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.7044 OF 2003

Krishnadevi Hiralal Soni.

...Petitioner.

Vs.

Harish Shambushan Hariani.

...Respondent.

....

Mr. R. V. More for the Petitioner.

Ms. Suhasini Mutalik for Respondent

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CORAM : [DR.D.Y.CHANDRACHUD](#), J.

June 10, 2005.

P.C.:

A decree for eviction has been passed in respect of the premises of a godown by the Trial Court which has been affirmed in appeal by the Appellate Bench of the Court of Small Causes. The decree for eviction is on four grounds: (i) Change of user; (ii) Non-user of the premises for the purpose for which they were let; (iii) Carrying out of a permanent structural alternation; and (iv) Waste and damage to the premises. These are substantially grounds which are relatable to Sections 13(1)(k), 13(1)(d) and 13(1) of the Bombay Rents, Hotel and Lodging Rates (Control) Act,

1947.

2. In so far as the change of user of the premises is concerned, it would, at the outset, be material to extract the pleading as set out in the Complaint and the defence in the Written Statement. In para 2 of the Complaint, the case which was set out by the Plaintiff was thus:

“2. The said premises are a godown and they were let out to the Defendant for using for purpose of storage of goods.”

The reply to this averment was as follows in para 2 of the Written Statement :

“With reference to para two of the Complaint, the Defendant submits that use of the suit premises is predominantly for storage and the Defendant is using the suit premises as storage.”

From the averments in the Complaint and the defence in the Written

Statement , it is abundantly clear that parties were ad idem on the position that the premises consist of a godown and that they were let for the purpose of the storage of goods. In fact, the defence of the Petitioner herein, was that the premises were being used predominantly for storage. The finding which has been arrived at by the Learned Trial Judge and which has been sustained in appeal is that the Petitioner commenced the business of manufacturing ornaments; that electric motors initially of two horse power and subsequently of five horse power came to be installed for drawing electrical power; that the premises were being used as a factory and that more than 20 persons were living and residing therein. The case of the Plaintiff was that not even a licence has been obtained from the Municipal Corporation. The Petitioner admitted in the course of the evidence that the premises were taken only for the purposes of a godown. The Petitioner was called upon to produce the electric bills, the licence, if any, for conducting the business and the books of account. Neither the electric bills, nor the books of account were produced though initially the witness for the Petitioner had agreed to produce the

accounts. The Trial Judge was, therefore, in my view, justified in drawing an adverse inference to the effect that the books of account and the electric bills were not produced for the simple reason that they would have divulged the nature and extent of the business that was carried out in the premises. There was unquestionably a change in the user of the premises. The premises which were admittedly let out for the purposes of storage, have been utilised for the manufacture of ornaments for which machinery has been installed and over 20 persons were employed. The nature of the new business and the scale of the operation have emerged from the evidence before the Trial Court.

3. On behalf of the Petitioner, it is, however, sought to be urged that the agreement under which the premises were let out prescribed that the godown shall not be used for any purpose other than a non-hazardous commercial purpose only and that this stipulation in clause 6 would indicate that the premises could be used for any non-hazardous commercial purpose whatsoever. This submission cannot be accepted for more than one reason.

First and foremost, there is a specific admission of the Petitioner in the Written Statement as well as in the evidence of her son that the premises were let out for storage. The defence that the premises were being used predominantly for storage has not been established by cogent evidence. That apart, the interpretation which has been placed by the Appellate Court on the stipulation contained in clause 6 of the agreement is that what the agreement contemplated was that the storage in the godown should be of non-hazardous items. This is a plausible view, one which the Court in the exercise of its jurisdiction under Article 227 of the Constitution would not interfere with, particularly in view of the pleading of the Petitioner in para 2 of the Written Statement. Finally, it is necessary for the Court to advert to the law laid down by the Supreme Court in **Jagdish Lal vs. Parma Nand**, (2000) 5 SCC 44. The Supreme Court has held that a new business started by the tenant in the premises let out to him would not amount to a change of user when the new business is an allied business or a business which is ancillary to the main business. The Court held that where premises are let out for commercial

purposes, carrying on of a new business activity therein would not change the nature of the building and it would still remain a commercial building. The Supreme Court however, ruled that, that is not enough. Having regard to the provisions of rent control regulation and the intendment of the legislature in providing that the tenant should not use the premises for a purpose other than that for which they were let out, the Supreme Court held, the new business should either have some linkage with the original business, which the tenant was permitted to carry on, or it should be an allied business or ancillary to that business. Applying the test which was laid down by the Supreme Court, it is evident that the view which has been taken by the Courts below would not warrant interference. Once it is established that there was a change of user, it would follow that the premises were not used for the purpose for which they were let.

4. As far as the question of permanent alteration is concerned, it is an admitted position that the Municipal Corporation issued a notice, in pursuance whereof, the loft which was

unauthorisedly constructed in the premises came to be demolished. The contention which has been urged before the Court is that the Petitioner had sought the permission of the landlord by a letter dated 30th January 1978 and that such permission had been granted by the landlord on 3rd February 1978. An application was made by the Petitioner to send the signature of the landlord for verification and comparison to a hand writing expert with reference to the alleged permission dated 3rd February 1978. The grievance is that the application before the Learned Trial Judge was not allowed at the interim stage and the Appellate Bench, did not consider the issue. There is no merit in the submission. First and foremost, even if the letter of the Petitioner dated 30th January 1978 is to be read in evidence, as the Petitioner seeks, the permission which was sought in the aforesaid letter was in the following terms:

“Kindly give me permission to carry work in Godown No.1, 13/F, Chakla Cross Lane, Devji Premji Bldg., Ground Floor, Bombay-3 with keeping the security of the said building.

- 1. From godown No.1 to Room No.14, at 1st floor, for going up and coming down to building up a new ladder.
- 2. Fan, Electric Fitting with Domestic Power.
- 3. Water Connection.”

This permission, according to the Petitioner, was granted by the landlord on 3rd February 1978. Ex-facie, neither the application by the Petitioner, nor the alleged permission of the landlord relate to the construction of or to the carrying out of repairs to the loft. The permission which was sought was for building a ladder from the godown to Room No.14 on the first floor. It is common ground that the Petitioner is a tenant in respect of certain other premises apart from the premises of the godown including Room Nos.14 and 14A which are situated immediately above the godown. The construction of a loft which is the ground for eviction, does not form the subject matter of the permission which was sought from the landlord, nor of the alleged grant of permission of 3rd February 1978. Both the Courts have relied upon the circumstance that the loft has been demolished by the Municipal Corporation. In these

circumstances, there is no reason for interference with the concurrent finding that the Petitioner had constructed an unauthorised loft in the premises which amounted to a permanent structural alteration. It has also been found by the Trial Court and in appeal by the Appellate Bench that apart from the construction of a loft, the Petitioner also pulled down and removed a portion of a wall on the northern side of the suit premises and had constructed a window in place thereof, thereby resulting in waste and damage.

5. Both the judgments of the Trial Court as well as of the Appellate Court are based on evidence on the record. In the circumstances, no interference under Article 227 of the Constitution is warranted. The Petition is accordingly rejected. However, in the circumstances of the case, the Petitioner shall have the time to vacate the premises until 31st December 2005 subject to the filing of the usual undertaking within a period of four weeks from today.

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